

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:07-CR-119-1BO  
NO. 5:12-CV-710

DONTE LAMARKUS ALSTON,	)	
Petitioner,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

This matter is before the Court on petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [DE 33]. Petitioner, Mr. Alston, asserts that he is not guilty of having been a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g), in light of the Fourth Circuit's holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc).


After being charged in a one-count indictment for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g), the petitioner pleaded guilty pursuant to a written plea agreement. On November 15, 2007, Mr. Alston was sentenced to 48 months' imprisonment.

The government has filed a response to the petitioner's § 2255 motion stating that it waives all time and procedural bars to the petitioner's claim of actual innocence [DE 37]. Furthermore, the government concedes that Mr. Alston "has a valid claim that, in light of Simmons, he was erroneously convicted of being a felon-possession of a firearm." Accordingly, the government urges the Court to reach the merits of the petitioner's motion.

In light of the foregoing and the hearing held on this and related matters on November 5, 2012, the Court accepts the government's recommendation. Mr. Alston's petition pursuant to 28

U.S.C. § 2255 is GRANTED and the judgment and conviction entered in this matter on November 15, 2007, are hereby VACATED.

SO ORDERED, this 19 day of November, 2012.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE